



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार 10 दिसम्बर, 2012/19 अग्रहायण, 1934

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

NOTIFICATION

Shimla, the 7th December, 2012

No. HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION/418.-

In exercise of the powers conferred by section 181, read with sections 39, 40, and 42 of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, the Himachal Pradesh Electricity Regulatory Commission, after previous publication, hereby makes the following regulations to amend the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term intra-State Open Access and Related Matters) Regulations, 2010:-

REGULATIONS

1. Short title and commencement.—(1) These Regulations shall be called the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term intra-State Open Access and Related Matters) (First Amendment) Regulations, 2012.

(2) These Regulations shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Regulation 2.—In regulation 2 of the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term intra-State Open Access and Related Matters) Regulations, 2010 (hereinafter called “the said Regulations”)-

- (i) in clause (5) the word “State” shall be substituted by the word “state”; and
- (ii) the following clause (5-A) shall be added; namely : -

“(5-A)” **consumer**” means any person who is supplied with the electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public in the State of Himachal Pradesh under the Act or any other law for the time being in force and includes any person whose premises are connected for the purpose of receiving electricity with the works of licensee, the Government or any such other person, as the case may be;

3. Amendment of Regulation 3.—In the first proviso to regulation 3 of the said Regulations after the words “distribution system”, the signs comma and the words “unless already connected,” shall be inserted.

4. Insertion of Regulation 3-A.—After regulation 3 of the said Regulations, the following regulation 3-A shall be inserted, namely:-

“3- A. Eligibility for Open Access.—(1) Subject to the provisions of these regulations and of sub-sections (2), (3) and (4) of section 42 of the Act, the open access to the distribution system of the distribution licensee is permitted to all the consumers who either –

- (i) require a supply of electricity, for their own use, with the contract demand exceeding one MVA; or
- (ii) have installed captive generating plants and require open access to the distribution system for conveyance of power to the destination of use at the consumer premises:

Provided that the Commission may, by order, permit open access in the distribution system to other consumers, subject to such terms and conditions and at such time, as it may consider feasible:

Provided further that the Commission may, after considering the operational constraints and the merits of each case before it, permit open access to the distribution system to such consumers, who have contract demand of 1 MVA or less and require power for their own use from the renewable energy generating sources located in Himachal Pradesh.

(2) Subject to sub-regulation (1) and other provisions of these regulations, the licensees, generating companies, captive generating plants and such consumers who have been permitted open access under sub-regulation (1) are eligible for open access to the intra-State transmission system of the State Transmission Utility or of any transmission licensee and the same shall accordingly be so granted on payment of transmission and other charges as applicable.

(3) Subject to sub-regulation (1) and other provisions of these regulations, the licensees, generating companies, captive generating plants and such consumers who have been permitted open access under sub-regulation (1) are eligible for open access to the distribution system of the distribution licensee and the same shall accordingly be so granted on payment of wheeling and other charges as applicable.

(4) A person having been declared insolvent or bankrupt or having outstanding dues, of more than two months' billing, to the distribution/transmission licensee at the time of application shall not be eligible for open access:

Provided that where the dispute regarding outstanding dues is pending before any Forum or Court of law and the stay is granted, in that case the person shall be eligible for seeking open access."

5. Amendment of Regulation 4.—In regulation 4 of the said Regulations for the words "State Load Despatch Centre", the words "distribution licensee" shall be substituted.

6. Amendment of Regulation 6.—In regulation 6 of the said Regulations-

- (a) for the opening words "The application", the words, figure, alphabet and sign "Subject to regulation 33-B, the application" shall be substituted; and
- (b) at the end the following "Note" shall be added, namely:-

"Note.-In cases where two or more intra State systems are involved, the application fee shall be equally apportioned between them by the nodal agency".

7. Amendment of Regulation 11.—In regulation 11 of the said Regulations, the sub-regulations (3), (4), (5) and (6) shall be omitted.

8. Amendment of regulation 26.—In regulation 26 of the said Regulations, the following subregulation (3) shall be added, namely:-

"(3) The Commission may, suo moto or on suggestions from the nodal agency, modify the detailed procedure approved under sub-regulation (1) so as to facilitate smooth implementation of these regulations."

9. Amendment of Regulation 29.—In the regulation 29 of the said Regulations for the words "HPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2007", the words "Himachal Pradesh Electricity Regulatory Commission (Levy and Collection of Fees and Charges by State Load Despatch Centre) Regulations, 2011", shall be substituted.

10. Amendment of regulation 31.—In regulation 31 of the said Regulations,-

- (i) in sub-regulation (1), the words "as estimated by the State Load Despatch Centre and applied" shall be omitted; and
- (ii) in sub-regulation (3), after the word "declared", the words "by the respective licensees" shall be inserted.

11. Amendment of Regulation-32.—In sub regulation (1) of regulation 32 of the said Regulations, after the words "open access in transmission" and before the words "by the distribution licensee" the word "and" shall be inserted.

12. Insertion of Chapter-7-A.—After existing Chapter-7 of the said Regulations, a new Chapter-7-A shall be inserted, namely:-

“CHAPTER-7-A

SPECIAL PROVISIONS FOR OPEN ACCESS IN DISTRIBUTION SYSTEM FOR THE CONSUMERS

33-A. **General.**—In case of the consumers the provisions contained in this Chapter shall be applicable for connectivity and long/medium term open access to the distribution system.

33- B. **Open access to existing consumers.**—The existing consumers, who are getting supply of electricity for their own use from the distribution licensee under the standard supply agreements and are eligible for open access to the distribution system as per regulation 3A, shall be provided connectivity and open access to the distribution system to the extent of their sanctioned contract demand:

Provided that such consumers shall arrange their electricity requirements (power and energy) for their consumption, including the corresponding energy losses for the various power systems involved in the open access which shall be borne in kind, with the concerned supplier(s) and shall so inform all the concerned agencies well in advance:

Provided further that where inter-state transmission system is involved in conveyance of power from the source of power to the consumer premises, the requisite permissions shall be obtained in accordance with the procedures laid down by the Central Electricity Regulatory Commission in their open access Regulations:

Provided further that such existing consumers shall enter into suitable separate agreements with licensee (s) for availing such open access well before the intended date of availing open access:

Provided further that, if there is no increase in contract demand-

- (i) such existing consumers shall not be required to pay any application fee for connectivity,
- (ii) such consumers shall pay the application fee for medium term and long-term open access at rate equivalent to 25% of the rate specified in regulation 6:

Provided further that such existing consumers shall also clear their dues against their existing electricity supply connections before availing such open access.

33-C. **Connectivity and Open Access to the prospective consumers.**—In case of prospective consumers seeking connectivity and long/medium term open access from the distribution licensee for receiving electricity for their own use or the existing consumers seeking increase in the existing sanctioned contract

demand, the terms and conditions as applicable to the prospective consumers or the existing consumers, as the case may be, under the Supply Code, the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure of Supply of Electricity) Regulations, 2012 and the Himachal Pradesh Electricity Regulatory Commission (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004 shall be applicable.

- 33-D. **Restrictions on delivery of power.**—In case of any operational constraints in the transmission system and/or distribution system, the distribution licensee may restrict/stagger the delivery of the electricity to the open access consumers in the same manner as applicable to other HT consumers in the area and such consumers shall restrict their drawl of electricity accordingly:

Provided that a distribution licensee shall not restrict the delivery of electricity due to the reasons of energy shortage in cases where the open access consumer-

- (i) is connected to the distribution system through a dedicated feeder emanating from the control sub-station of the licensee; and
- (ii) the day ahead scheduling is being done for drawl of electricity by the consumer in accordance with the regulation 33-G and the required quantum of electricity is being injected to the distribution system in the relevant time blocks for delivery to the consumer for his own use.

- 33-E. **Arrangements for standby power.**—The consumers availing open access shall also tie up the supply of standby power under various eventualities such as non-scheduling of power from the generation source due to any reasons, including outages at the generation source which may be of planned, forced or emergent nature, and constraints in transmission system(s):

Provided that such open access consumers may get such standby power from the distribution licensee at mutually agreed terms and conditions:

Provided further that in case of supply of the standby power by the distribution licensee, the rate (inclusive of wheeling charges, cross subsidy surcharge, additional surcharge and energy losses) for supply of such power at consumer's premises shall not exceed 125% of the overall average rate, worked out by adopting load factor of 60%, under temporary supply tariff approved by the Commission for supply of power to the other HT consumers in the area.

- 33-F. **Violation in sanctioned contract demand.**—The consumer availing open access shall not exceed the contract demand sanctioned in his favour at any time and in case of any violations in any time block the distribution licensee shall be entitled to recover the violation charges as may be fixed by the distribution licensee without prejudice to its rights to disconnect electricity of such consumers.

- 33-G. **Scheduling.**—(1) Subject to the provisions of sub-regulations (2), scheduling on day ahead basis shall be done by the State Load Despatch Centre in

accordance with the applicable Grid Code for the consumers availing open access.

- (2) In case the inter-state transmission system is not involved in providing open access to a consumer and the sanctioned contract demand of the consumer does not exceed 5.5 MVA or such other limit as may be fixed by the Commission, day ahead scheduling shall not be done for such consumers and in such cases the distribution licensee and the open access consumer shall mutually agree on terms and conditions as well as the procedures for settlement of time differentiated energy accounts on the basis of weekly data:

Provided that the distribution licensee shall adopt uniform principles for the purpose of evolving such terms and conditions and procedures and shall include the same in the detailed procedure as per Regulation 26:

Provided further that the generating station from which such open access consumer has contracted power shall be subjected to scheduling requirements as per the applicable Grid Code.

- (3) In cases where day ahead scheduling is not done in accordance with subregulations (2), the concerned parties shall also mutually agree about the procedures for accounting of applicable energy losses and reactive energy.

33-H. **Renewable power purchase obligations.**—Each consumer availing open access shall fulfill its Renewable Power Purchase Obligation (RPPO) as per the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010.

33-I. **Metering.**—(1) In cases where day ahead scheduling is to be done for any of the time block(s) in accordance with regulation 33-G, the metering arrangements shall be compatible to the requirements of such scheduling and also have the features of the special energy meters as per Annexure-II of the Grid Code.

(2) In cases where the day ahead scheduling is not to be done for any of the time block(s) in accordance of regulation 33-G, the metering arrangements shall be compatible with the requirements as per the arrangements tied up by the consumers for purchase of power and for delivery of power to them.

33-J. **Applicability of Codes.**—The consumers availing open access shall also be governed by the provisions applicable to the consumers under the Supply Code, Grid Code and Distribution Code.

33-K. **Multiple source of Power.**— In case the consumer ties up his power requirement from more than one sources, the energy accounting etc. and other adjustments shall be done in accordance with the principles to be incorporated in the detailed procedure.

- 33-L **Overriding effect.**—In case of any conflict of provisions contained in this Chapter with the general provisions contained in other Chapters of these regulations, the special provisions contained in this Chapter shall have overriding effect in the matters relating to connectivity and open access to the consumers in the distribution system”.

By the order of the Commission

-Sd-
Secretary.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-71 001

NOTIFICATION

Shimla, the 4th December, 2012

No. HHC/Admn.16 (15)74-V.—Hon’ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners(Appointment & Control) Rules, 2007 has been pleased to appoint Sh. Sunil Kumar, Advocate, Solan as Oath Commissioner at Solan, H.P. for a period of two years, with effect from 6.12.2012, for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 5th December, 2012

No. HHC/Admn.16 (21)75-IV.—Hon’ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Sh. Surender Kumar and Ms. Nisha Devi, Advocates of H.P. High Court as Oath Commissioners for the High Court of Himachal Pradesh, Shimla, with immediate effect, for a period of two years, for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA**NOTIFICATION***Shimla, the 5th December, 2012*

No. HHC/Admn.3 (139)/79.—13 days earned leave on and w.e.f. 17.12.2012 to 29.12.2012 with permission to affix Sundays falling on 16.12.2012 and 30.12.2012 is hereby sanctioned in favour of Shri Kamal Kishore Sood, Deputy Registrar of this Registry.

Certified that Shri Kamal Kishore is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Kamal Kishore would have continued to officiate the same post of Deputy Registrar, but for his proceeding on leave.

By order,
Sd/-
Registrar General.

Department of Labour and Employment**NOTIFICATION**

No: Sharm (A) 7-1/2005 (Award) -part-file Dated Shimla-2 , 2012.

In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Shimla of the following cases on the website of Labour & Employment Department:-

Sr. No:	Case No:	Title of the Case	Date of Award
1.	80/2009	Smt./Shri Ku.Seema Thakur V/s Gurukul Management as Marketing New Delhi.	11-10-2012
2.	61/2009	Sh. Rajesh Kumar V/s I&PH Shimla	30-10-2012
3	90/2010	Sh.Naresh Kumar V/s M.D. HPTDC Ltd.	12-10-2012
4	29/2007	Sh. Sher Singh V/s M/s Sinic Electronics Ltd.	17-10-2012
5	53/2009	Sh. Prem Singh V/s D.M.Forest Corp Rampur	6-10-2012
6	74/2008	President/Gen Secy B.C.S. workers union V/s Head Master B.C.S.	6-10-2012
7	124/2010	Tarsem Lal V/s M/s Regalia laminates Baddi.	6-10-2012
8	29/2012	Sh. Besar Lal V/s M/s Xen, HPSEB Sunni.	5-10-2012
9	103/2007	Sh. Mansa Ram V/s HPSEB Arki.	6-10-2012
10	82/2010	Sh. Raju Ram V/s M/s Navdeep Biocevticals Pvt. Ltd.	12-10-2012
11	31/2010	Sh. Salinder Kumar V/s M.D. The Himachal Energy Jabli, Solan.	17-10-2012
12	95/2010	Sh. Om parkash V/s M/s perfect security Parwanoo.	3-10-2012

By order,
Sd/-
Addl. Chief Secretary (Labour & Employment).

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 74 of 2008.
Instituted on. 10.12.2008.
Decided on 6.10.2012.

President/General Secretary, B.C.S Workers Union (Affiliated to CITU), B.C.S School,
Shimla-2.

...Petitioner.

Vs.

The Principal/ Head Master, B.C.S School, Shimla-2.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjana Verma, Advocate.
For respondent : Already ex-parte.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether demands raised by the President/General Secretary, B.C.S Workers Union, Shimla-2 (Affiliated to CITU) through their demand notice dated 18-7-2007 (copy enclosed) to the Head Master, Bishop Cotton School, Shimla-171002 are proper and justified? If yes, what relief and compensation the aggrieved workers of the school are entitled to from above management?”

2. The petitioner has filed the claim stating that the thirty three workmen of the petitioner union were retrenched by the respondent against the provisions of Industrial Disputes Act, 1947. The petitioner union was registered and it had filed a memorandum before the respondent on 18.7.2007 with the request to implement the compromise arrived at between the parties in front of Conciliation and Labour Officer on 9.3.2006. Despite said compromise on 6.12.2008, the respondent retrenched the services of thirty three workers illegally. There was a memorandum of settlement between the parties under section 12 (3) of Industrial Disputes Act on 25.4.2009 according to which respondent had agreed to take back twenty three workers. Hence, the claim was filed with the prayer that termination of thirty three workers be declared illegal, null & void and all of them be reinstated.

3. The petitioner got the claim amended and also stated that the respondent was not adhering to the memorandum dated 18.7.2007. The respondent denied to implement the aforesaid memorandum as well as compromise arrived at between the parties on 9.3.2006. Hence, prayer was made directing the respondent to implement the aforesaid settlement.

4. The respondent contested the claim by filing a reply wherein preliminary objections as to maintainability, suppression of material facts by the petitioner and estoppel were raised. On merits, respondent admitted that the petitioner was union of the workmen. It was also admitted that a memorandum of settlement was arrived at between the parties on 9.3.2006 under section 12(3) of Industrial Disputes Act, 1947. The respondent also admitted that another settlement was also arrived at between the parties on 18.7.2007. The respondent denied that the aforesaid settlement was not being implemented. It was stated that the claim of petitioner was baseless and without any

merits. In fact, the management and representatives of petitioner union agreed to settle the demands as under:

- (i) The management has agreed to only consider the employ Shri Lagnu Ram against a suitable vacancy as and when the same are in any case within the month's time and the replying respondents have employed Shri Lagnu Ram and he is doing the service with the replying respondents.
- (ii) Regarding the promotion of the workers in the School Mess, the management ha advised that Shri Jai Lal and Shri Prem Lal should go for training at the Food and Catering Institute Kufri and after they have successfully completed the same, their request for promotion as cook could be considered but they have not gone for the training, but Shri Prem Lal was promoted as helper cook.
- (iii) Regarding the allotment of the accommodation, the management has agreed to allot vacant accommodation on seniority basis (years of service at Bishop Cotton School, Shimla) after a complete inspection of the allotted accommodation is conducted and the replying respondents are making the allotment on seniority basis and on availability of vacant accommodation for allotment.
- (iv) To grant the DA, the management has agreed to this fact after due approval from the Board of Governors. The Board of Governors has approved 5% DA to the petitioner claimant and that 5% DA has been paid to the petitioner.
- (v) So far as earned leave accumulation the management has agreed to accumulation of 10 days earned leave per completed year of the service upto a maximum of 100 days only for the non vacation category of staff subject to seeing that the work in the school is not dislocated/disturbed in any manner prior to leave being sanctioned by the management.
- (vi) For union office due to constraints of space, it will not be possible to provide this facility however, this will once again be referred to the Board of Governors for their consideration but till today no decision has been taken by the Board of Governors. This memo was signed by the petitioner and the respondents and copy of that memo was sent to the Labour-cum-Conciliation Officer Shimla Zone, Shimla (HP). The respondent was ready to fulfill all the conditions of the settlement. Consequently, respondent prayed for the dismissal of the petition.

5. No rejoinder was filed. On the pleadings of the parties, the following issues were framed.

1. Whether the demands raised by petitioner union through its President/General Secretary through their demand notice dated 18.7.2007 are proper and justified?
..OPP.
2. If issue no.1 is proved, to what relief and compensation the workers of the petitioner union is entitled to?
..OPP.
3. Whether this claim petition is not maintainable?
..OPR.
4. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed.

7. After petitioner evidence, the case was fixed for respondent's evidence when nobody appeared on behalf of respondent. Consequently, respondent was proceeded against ex parte.

8. The ex parte arguments of Ld. Counsel for petitioner were heard and I have gone through the record also.

9. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Twenty three retrenched employees of the petitioner union whose names are mentioned in the list attached with Ex. C-1 are entitled to be reinstated without any break in service and remaining ten retrenched employees shall be treated as per the settlement Ex. C-1.

Issue No. 3 No.

Relief. Reference answered in affirmative per operative part of award.

Reasons for finding

Issue No. 1 & 2.

10. Both these issues are interlinked and can be disposed of by a single finding.

11. From the careful perusal of the pleadings as well as evidence on record, it is undisputed that there was a memorandum of settlement between the parties on 9.3.2006. On behalf of petitioner Shri Chunni Lal Secretary of the union stepped into the witness box and he has filed on record, the copy of said settlement dated 9.3.2006 Ex. P-3. He also tendered in evidence registration certificate of petitioner union Ex. P-1 and the copy of demand notice is Ex. P-2. He also deposed that the respondent did not implement the settlement Ex. P-3, consequently, another demand notice dated 18.7.2007 Ex. P-4 was filed.

12. From the perusal of the original as well as amended claim filed by the petitioner, it is clear that petitioner has alleged that thirty three employees/workmen were illegally terminated by the respondent. The record is revealing that in order to resolve the controversy, a memorandum of settlement was arrived at between the parties on 25.4.2009, copy of which is on record. Inadvertently, it could not be tendered in evidence, so, in the interest of justice said memorandum of settlement dated 25.4.2009 is admitted in evidence by this Court as Ex. C-1. This memorandum is revealing that the respondent has agreed to take back twenty three dismissed employees list of which is attached with Ex. C-1 and for remaining ten employees there was a settlement that the employer has given offer of compensation package or independent enquiry against them and those employees would give consent within five days whether to take offer of compensation or to face enquiry which should be conducted by the SDM/ ADM, Shimla. During enquiry the employees would get suspension allowances. The re-engaged twenty three employees shall not be treated as surplus employees for retrenchment purpose and there shall be no break in their service.

13. In the light of said memorandum, the twenty three employees mentioned in the list attached with Ex. C-1 are entitled to be reinstated without any break in service and the remaining ten employees shall be treated in view of the terms and conditions of the aforesaid settlement Ex. C-1.

14. There is no other specific claim filed by the petitioner union. It is only alleged that the respondent is not implementing the memorandum of settlement Ex. P-3. In reply, the respondent has specifically admitted that the said memorandum of settlement. So, under law the respondent is duty bound to fulfill all the terms and conditions of settlement dated 9.3.2006 arrived at between the parties. There is no specific claim to the effect that which term or condition of said memorandum was violated by respondent.

15. Accordingly, for the aforesaid reasons, it is hereby held that the demands raised by the petitioner union through its President/General Secretary vide demand notice dated 18.7.2007 are proper and justified and the twenty three retrenched employees of the petitioner union whose names are mentioned in the list attached with Ex. C-1 are ordered to be reinstated without any break in service and remaining ten retrenched employees shall be treated as per the settlement Ex. C-1. It is further ordered that respondent is bound to implement all the terms and conditions of settlement Ex. P-3.

16. Hence, for the aforesaid reasons, both these issues are answered in favour of the petitioner.

Issue No. 3

17. From the careful perusal of the record, there is nothing to suggest that the petition is not maintainable. Hence, this issue is decided against the respondent.

Relief

For the reasons recorded hereinabove, the claim of the petitioner union is allowed to the effect that the twenty three retrenched employees of the petitioner union whose names are mentioned in the list attached with Ex. C-1 are ordered to be reinstated without any break in service and remaining ten retrenched employees shall be treated as per the settlement Ex. C-1. It is further ordered that respondent is bound to implement all the terms and conditions of settlement Ex. P-3. In view of said observation, the reference is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of October, 2012 in the presence of parties counsel.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 103 of 2007.
Instituted on. 24.9.2007.
Decided on 6.10.2012.

Mansa Ram S/o Shri Hazaru Ram R/o Village Sanahali, P.O Kandhar, Tehsil Arki, District Solan, H.P.

...Petitioner.

Vs.

The Senior Executive Engineer, Electrical Division, HPSEB Arki, District Solan, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Virender Thakur, Advocate.
For respondent : Shri Bhagwan Chand, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Mansa Ram S/o Shri Hazaru Ram workman by the Senior Executive Engineer, Electrical Division, HPSEB Arki, District Solan, H.P w.e.f. 21.8.1994 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim stating that he was engaged as beldar by the respondent and worked at Sub Division, Darlaghat under Electricity Division, Arki District Solan w.e.f. 26.3.1982. The services of petitioner were orally terminated on 20.2.1995. The petitioner completed 240 days in one calendar year but no notice was given to him before termination and he was also not paid any compensation. The junior workers were also engaged by the respondent after the termination of petitioner. Hence, petitioner prayed that he be reinstated with all consequential benefits alongwith back wages, seniority and continuity, as his services were terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947.

3. The respondent contested the claim by filing a reply wherein preliminary objections as to maintainability and delay were raised. On merits, it was admitted that the petitioner was engaged w.e.f. 26.3.1982. The respondent denied that the services of petitioner were orally terminated on 20.2.1995. The petitioner did not work continuously during one calendar year for 240 days. In fact, the petitioner had left the job at his own and did not come again to join the service. The petitioner did not work regularly and there were breaks in between. So, there was no violation of any provisions of Industrial Disputes Act, 1947. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the termination of the services of Shri Mansa Ram petitioner by the Senior Executive Engineer, Electrical Division, HPSEB Arki, District Solan w.e.f. 21.8.1994 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged?

. .OPP.

2. If issue no.1 is proved, to what relief of service benefits and amount of compensation the petitioner is entitled to?

. .OPP.

3. Whether the reference is not maintainable as alleged?

. .OPR.

4. Whether the reference is hit by delay and laches?

. .OPR.

5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No. 3 No.

Issue No. 4 No.

Relief. Reference answered in negative as the termination of the petitioner is improper and unjustified per operative part of award.

Reasons for finding

Issue No. 1 & 2.

9. Both these issues are interlinked and can be disposed of by a single finding.

10. In order to prove his claim, the petitioner Mansa Ram stepped into the witness box as PW-1 and deposed that his services were illegally terminated by the respondent without any notice and compensation. He further stated that he completed 240 days in a calendar year during his service. It was also deposed by him that the respondent had engaged junior workers after his termination. He tendered in evidence the seniority list Ex. PA which was obtained by him under the R.T.I Act.

11. On the other hand, on behalf of respondent Shri Inder Singh, Junior Engineer appeared in the witness box as RW-1 and deposed that the petitioner had worked till 20.8.1994 and thereafter, he had left the job. He further deposed that petitioner never completed 240 days in a calendar year prior to leaving of job. He produced on record mandays chart Ex. RW-1/A and notice Ex. RW-1/B.

12. In the light of pleadings as well as evidence on record, it is undisputed that the petitioner was engaged by the respondent in the year 1982 as workman. Although, the petitioner has alleged that he worked for 240 days in a calendar year prior to his termination but in support of this contention, I do not find any convincing evidence on record on behalf of petitioner. The sole testimony of petitioner is not sufficient to prove this fact. On behalf of respondent, the copy of mandays chart Ex. RW-1/A from 1987 to 1994 was filed. The careful perusal of same is revealing that petitioner never worked for 240 days in a calendar year. As the result, there is no question of violation of section 25-F of Industrial Disputes Act, 1947.

13. However, at the same time, the petitioner has alleged that junior workmen to him were engaged after his termination. The respondent has taken the plea that petitioner himself had left the job on 20.8.1994. But this plea of respondent cannot be accepted. It cannot be believed that without any reason, the petitioner had left the job. Although, the respondent had placed on record copy of notice Ex. RW-1/B issued to petitioner and three other workmen asking them to join the duties but there is nothing on record whether said notice dated 22.12.1994 was received by the

petitioner or not. Moreover, there is nothing in said notice that petitioner had left the job on 20.8.1994. So, this notice Ex. RW-1/B would not be helpful to the respondent.

14. The petitioner has placed on record the copy of seniority list Ex. PA which he obtained under the Right to Information Act. This seniority list has not been disputed by the respondent as no cross-examination of petitioner as to the said seniority list was conducted by the respondent. Seniority list Ex. PA is revealing that after 20.8.1994 the respondent had engaged other workers namely, S/Shri Dineshwar Sharma, Roshan Lal, Ramesh Pal, Trilochan Singh, Mast Ram etc. The witness of respondent RW-1 Inder Singh in his cross-examination has expressed his ignorance whether any junior workman was engaged after petitioner left the job. This evasive reply on the part of witness of respondent is sufficient to suggest that he had not specifically denied the plea of petitioner that in fact junior workmen were engaged by the respondent after the termination of petitioner. Moreover, Ex. PA seniority list is sufficient to establish that junior workmen were engaged by the respondent after the retrenchment of the petitioner. Hence, there is violation of section 25-H of Industrial Disputes Act, 1947 as no opportunity was given to the petitioner to re-employ him.

15. Consequently, for the aforesaid reasons, certainly the termination of petitioner on 21.8.1994 is illegal and not sustainable under law being against the provisions of Industrial Disputes Act, 1947.

16. The present reference was received in this Court in 2007. So, it cannot be believed that from 1994 to 2007, the petitioner remained without any job. It can be safely inferred that during said period, the petitioner was gainfully employed. Therefore, the petitioner is not entitled to any back wages. However, the petitioner is entitled to be reinstated with seniority and continuity in service.

17. Hence, for the aforesaid reasons, both these issues are answered in favour of the petitioner.

Issue No. 3

18. From the careful perusal of the record, there is nothing to suggest that present reference is not maintainable. Hence, this issue is decided against the respondent.

Issue No. 4

19. For the reasons recorded hereinabove while deciding issues No. 1 & 3, the services of petitioner were illegally terminated on 21.8.994 by the respondent without complying with the provisions of Industrial Disputes Act, 1947. Therefore, there is no question of any delay and laches. Hence, this issue is also decided against the respondent.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and the reference is answered in negative as the termination of the services of the petitioner is improper and unjustified. Consequently, the petitioner is entitled to reinstatement in service with immediate effect with seniority and continuity but without back wages. Let a copy of this award be sent to the

appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of October, 2012 in the presence of parties counsel.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 53 of 2009.
Instituted on. 10.8.2009.
Decided on 6.10.2012.

Prem Singh S/o Shri Kalam Singh R/o VPO Kungalbalti, Tehsil Nankhari, District Shimla,
H.P.

. . Petitioner.

Vs.

The Divisional Manager, Forest Corporation, Rampur Division, District Shimla, H.P.

. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Dalip Kaith, Advocate.

For respondent : Shri Balram Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the action of employer i.e Divisional Manager, Forest Corporation, Rampur Division, District Shimla, H.P to terminate the services of Shri Prem Singh S/o Shri Kalam Singh on being absent from duty vide orders dated 4.6.2005 without any notice and compensation is proper and justified? If not, what relief of service benefits including seniority and compensation the above aggrieved worker is entitled to? ”

2. The petitioner has filed the claim stating that he was working as field-man on daily wages with the respondent since June, 1992 and continued to work till 3.6.2005. On 4.6.2005, his services were illegally terminated vide order no. 43/2005. The termination of petitioner was against the mandatory provisions of Industrial Disputes Act, 1947. No opportunity of being heard was given to him as before his termination no notice was served upon him. Hence, the claim petition was filed with the prayer to set aside the termination order and to reinstate him with all consequential service benefits.

3. The respondent contested the claim by filing a reply wherein preliminary objections as to suppression of material facts by the petitioner, maintainability, locus standi of petition and estoppel were raised. On merits, the respondent admitted that the petitioner was engaged on daily wages in June, 1992 as field-man-cum-Chowkidar. He was terminated on 4.6.2005 because he was found absent from his duties which led to theft of timber in the night on 8.5.2005. The notice dated 20.5.2005 was served upon the petitioner to explain his position within ten days but the petitioner failed to file any reply. Consequently, an enquiry was conducted wherein he was found guilty as the result, his services were terminated. Accordingly, respondent prayed for the dismissal of the claim petition.

4. Petitioner did not file any rejoinder. On the pleadings of the parties, the following issues were framed.

1. Whether the services of petitioner vide order dated 4.6.2005 were terminated by the D.M Forest Corporation, Rampur Division, District Shimla, H.P in an illegal and unjustified manner without notice and compensation as alleged?

OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to and from whom?

OPP.

3. Whether the claim of the petitioner is not maintainable?

OPR.

4. Whether the claim of the petitioner is bad for non-joinder and misjoinder of necessary parties?

OPR.

5. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No. 3 No.

Issue No. 4 No.

Relief. Reference answered in negative as the termination of the petitioner is improper and unjustified per operative part of award.

Reasons for finding

Issue No. 1:

8. After hearing both the parties and going through the record carefully, I am of the considered opinion that the services of the petitioner on 4.6.2005 were illegally terminated by the respondent without giving him any opportunity of being heard. The termination of petitioner is against the principles of natural justice and not sustainable under law.

9. It is not disputed fact that the petitioner was working as daily wages employee under the respondent since June, 1992. It is also not disputed that his services were terminated on 4.6.2005 vide termination order Ex. RW-1/E. Petitioner Prem Singh stepped into the witness box as Pw-1 and deposed that he was not at fault for the theft of timber on 8.5.2005 because on that day he was on election duty at Rampur whereas at Narkanda where the theft was committed, Shri Man Bahadur and Beer Singh were on duty. He also deposed that he was not given any opportunity of being heard and he denied that any notice was served upon him.

10. On behalf of respondent Shri Ashok Negi, Divisional Manager, Forest Corporation Rampur appeared in the witness box as RW-1 and deposed that the petitioner was found absent from duty on 8.5.2005 at Dhomri Forest Depot. And his absence led to the theft of timber. He further deposed that earlier also the petitioner was in the habit of remaining absent without any information and an enquiry was held wherein the petitioner was found guilty. He also deposed that notice dated 20.5.2005 was served upon the petitioner to explain his position within ten days. He tendered in evidence the information regarding the absence of petitioner Ex. RW-1/B, copy of notice dated 20.5.2005 Ex. RW-1/C, the receipt of notice Ex. RW-1/D and copy of termination order Ex. RW-1/E.

11. From the aforesaid evidence, it is clear that the respondent has alleged that on 8.5.2005 when the theft was committed, the petitioner was found absent from his duties. No attendance register was produced in evidence by the respondent to show that in fact on 8.5.2005, the petitioner Prem Singh was deputed at the Forest Corporation Depot. Dhomri from where the theft took place. Here, the cross-examination of RW-1 Shri Ashok Negi is relevant as in his cross-examination he has stated that on 8.5.2005 at Dhomri Depot as per record Shri Bir Singh and Man Bahadur were on duty. He has not stated that petitioner Prem Singh was also on duty at Dhomri Depot on 8.5.2005. Then, I failed to understand how petitioner could be liable for the theft from Dhomri Depot, on 8.5.2005.

12. So, in the light of aforesaid testimony of RW-1 Shri Ashok Negi, the petitioner cannot be held liable. Consequently, the show cause notice dated 20.5.2005 Ex. RW-1/E has got no legal consequences as it has been mentioned in the notice that the absence of petitioner from duty on 8.5.2005 led to the theft in question.

13. Moreover, RW-1 Shri Ashok Negi also tendered in evidence the copy of enquiry report Ex. RW-1/F wherein petitioner Prem Singh was held guilty. This enquiry report is dated 11.5.2005 but the show cause notice Ex. RW-1/C was dated 20.5.2005. That means notice Ex. RW-1/C was issued after the enquiry report Ex. RW-1/F. It established that prior to the enquiry no show cause notice was issued to the petitioner. This fact goes to establish that the petitioner was not at all associated during the enquiry. Therefore, certainly, the petitioner has been condemned unheard as there is violation of principles of natural justice. On this ground also, the enquiry report Ex. RW-1/F is not sustainable under law and on the basis of same, the petitioner could not be terminated from service.

14. Hence, in the light of my aforesaid discussion, I find sufficient evidence on record to suggest that petitioner was not on duty on 8.5.2005 at Forest Depot. Dhomri from where the theft was committed. So, petitioner could not be held liable for the said theft. Further, it is also proved on record that no opportunity of being heard was given to the petitioner as he was not associated during enquiry. Therefore, the termination order of petitioner dated 4.6.2005 is not sustainable under law and liable to be set aside.

15. Accordingly, for the aforesaid reasons, this issue is answered in favour of the petitioner.

Issue No. 2 :

16. For the reasons to be recorded hereinabove while discussing issues no.1, the termination orders of the petitioner dated 4.6.2005 issue by respondent are hereby set aside and the petitioner is entitled to reinstatement in service with immediate effect on the same terms and conditions along-with seniority and continuity. However, keeping in view the facts and circumstances of the case, the petitioner is not entitled for back wages. Accordingly, this issue is decided in favour of petitioner.

Issue No. 3 :

17. From the careful perusal of the record, there is nothing to suggest that the petition is not maintainable. Hence, this issue is decided against the respondent.

Issue No. 4 :

18. The services of petitioner were terminated by Divisional Manager Forest Corporation, Rampur and petitioner has challenged his termination order and petition has also been filed against Divisional Manager Forest Corporation, Rampur. The record is revealing that earlier the petition was filed against Divisional Forest Officer, Rampur but subsequently, the petition was amended and the name of respondent was corrected as Divisional Manager Forest Corporation, Rampur, District Shimla. Therefore, I do not find that petition is bad for non-joinder and mis-joinder of necessary parties. Consequently, this issue is also decided against the respondent.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed and the reference is answered in negative as the action of the employer i.e Divisional Manager Forest Corporation, Rampur to terminate the services of the petitioner is improper and unjustified. Consequently, the petitioner is entitled to reinstatement in service with immediate effect with seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of October, 2012 in the presence of parties counsel.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 82 of 2010.
Instituted on. 2.7.2010.
Decided on 12.10.2012.

Raju Shyam S/o Shri Lal Dass R/o Village Jalithi, P.O Batari, Tehsil Kumarsain, District Shimla, H.P. . . *Petitioner.*

Vs.

1. M/s Navdeep Bioceuticals, Hill Top Industrial Estate, Jharmajri EPIP Phase-1 (Ext.) Bhatoli Kalan Baddi, H.P through its Managing Director.

2. Shri Navdeep B. Singhal Director (P&A) M/s Navdeep Bioceuticals, Hill Top Industrial Estate, Jharmajri EPIP Phase-1 (Ext.) Bhatoli Kalan Baddi, H.P. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Dinesh Kainthla, Advocate.

For respondent : Already ex-parte.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Raju Shyam S/o Shri Ram Dass by the management of M/s Navdeep Bioceuticals, Pvt. Ltd., Hill Top Industrial area, Jharmajri Teshil Baddi, District Solan, H.P w.e.f. 15.9.2009 without following the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, to what relief and consequential service benefits Shri Raju Shyam S/o Shri Ram Dass worker is entitled to from the above management?”

2. The petitioner has filed the claim stating that he was working with the respondent as an Operator w.e.f. 1.6.2007. The initial salary of petitioner was Rs. 7,000/- and he was also entitled to increments from time to time. The respondent company asked the petitioner to leave the job on 15.9.2009. The petitioner requested the respondent company not to terminate his service, but in vain. The petitioner had worked continuously for more than 240 days in a calendar year prior to his dismissal, so, his dismissal/termination was illegal and arbitrary as no notice was sent to him before his termination. The petitioner raised a demand notice and consequently the present reference was received in this Court.

3. The record is revealing that initially Learned Counsel Shri Nipun Diwedi, Advocate put appearance on behalf of the respondents and prayed time to file reply. Subsequently, none appeared on behalf of respondents, as the result, respondents were proceeded against ex-parte.

4. The ex-parte evidence of petitioner recorded.

5. The ex-parte arguments of Ld. Counsel for petitioner were heard and I have gone through the record also.

6. After due consideration, the un-rebutted ex-parte evidence of petitioner is sufficient to establish that he was working with the respondent company and his services were illegally and wrongly terminated by the respondent company in violation of the provisions of Industrial Disputes Act, 1947.

7. The petitioner Raju Shyam appeared in the witness box and filed his affidavit Ex. P-1 wherein he deposed that he was engaged by the respondent no.1 as an Operator w.e.f. 1.6.2007 and he was asked to leave the job on 15.9.2009 without any reason. His testimony is also revealing that he has worked for 240 days in a calendar year. He has also deposed that he was issued E.S.I Card, copy of which is Ex. PW-1/B. This card is sufficient proof to establish that in fact the petitioner Raju Shyam was employee of respondent no.1. The petitioner has further deposed that he had made a representation to the Managing Director of respondent company copy of which is Ex. PW-1/C.

He has categorically deposed that he worked continuously for two years without any break till 15.9.2009. Hence, he prayed to set aside his termination order and to reinstate him along-with all service benefits and adequate compensation.

8. Since, on behalf of respondents no evidence, in any manner, whatsoever is adduced and the testimony of petitioner also remains un-rebutted as no cross examination was conducted to the petitioner, therefore, I am in agreement with the testimony of petitioner that he was engaged by the respondent no.1 on 1.6.2007 and worked continuously till 15.9.2009 when his services were terminated. I am also in agreement with the testimony of petitioner that he worked continuously for 240 days in a calendar year prior to his termination on 15.9.2009. Therefore, the petitioner is entitled to get the protection of section 25-F of Industrial Disputes Act, 1947 which makes it mandatory on the part of respondents to serve a notice of one month's and to pay compensation to the petitioner before terminating his services. But, no such steps were taken by the respondents company before terminating the services of petitioner.

9. Accordingly, for the aforesaid reasons, the termination of petitioner dated 15.9.2009 by the respondent no.1 is hereby set aside being illegal and not justified. As the result, the claim petition is allowed to the effect that petitioner is hereby ordered to be engaged and reinstated in service by the respondent no.1 with seniority and continuity in service. However, taking into account the facts and circumstances of the case, the petitioner shall not be entitled to the back wages. So, the petitioner is reinstated without any back wages.

10. In the light of these observations, the reference is hereby answered in negative as the termination of petitioner by the respondent No.1 w.e.f. 15.9.2009 is not proper and justified. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 12th day of October, 2012.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

Ref. 29/2012

Sh Basar Lal V/s Xen, HPSEB Sunni

5/10/2012.

Present: Petitioner in person.

Shri Chandan Advocate for respondent.

Today, the petitioner present in the Court disclosed that he was to get nothing from the respondent. Therefore, he did not want to file any claim. He prayed not to press the reference. To this effect, statement of petitioner recorded. Consequently, the reference is decided accordingly in view of the aforesaid statement of the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.
5/10/2012.

By order,
Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Sh Salinder Kumar V/s M.D. the Himachal energy Jabli , Solan

17.10.2012.

Present: Petitioners with Shri Niranjana Verma, Advocate.

Shri Rahul Mahajan, Advocate for respondent.

Today, both the petitioners present in the Court disclosed that they have settled the dispute with the respondent. In the light of settlement, both the petitioners received cheque of Rs. 60,000/- (Rs. Sixty Thousand only) each from the respondent and stated that they have no claim against the respondent and also prayed not to press the claim petition and decide the reference in the light of said settlement.

A joint statement of both the petitioners recorded. In view of the aforesaid settlement, they have received cheque of Rs. 60,000/- (Rs. Sixty Thousand only) each from the respondent as full & final settlement.

In the light of aforesaid settlement, the claim petition filed by the petitioners is hereby dismissed. Consequently, the reference is answered in affirmative to the effect that the dismissal from services of both the petitioners by the respondent w.e.f. 3.9.2008 is legal and justified and now apart from the aforesaid payment of Rs. 60,000/- (Rs. Sixty Thousand only) each, both the petitioners are not entitled to any service benefits from the respondent. The joint statement of both the petitioners recorded today shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.

17/10/2012.

By order,
Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Ref. 90/2010

Sh Naresh Kumar V/s HPTDC, Shimla

12.10.2012.

Present: Petitioner in person.

Shri Sanjay Kumar, Law Officer with Shri Virender Sharma, Advocate for respondent.

Today, petitioner disclosed that he has amicably settled the dispute with the respondent and he has no claim against the respondent. As the result, he intended not to file any claim. Statement of petitioner recorded.

The following reference was received from the appropriate government for adjudication:

“Whether the penalties imposed upon Shri Naresh Kumar, Washer Boy by the Managing Director, H.P Tourism Development Corporation Ltd. Ritz Annexe, Shimla-1 by reducing his salary to the lowest stage of the time scale of pay for a period of three years with cumulative effect and also disallowing future increments for three years, is proportionate to his guilty? If not, to what relief of service benefits and compensation the aggrieved workman is entitled to from above employer?”

In view of statement of the petitioner recorded today, the dispute has been amicably settled. Hence, in the light of the statement of petitioner recorded today in the Court, the present reference is decided accordingly and from this Court the petitioner is not entitled to any service benefits and compensation in any manner whatsoever. The statement of petitioner shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.

12/10/2012.

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref. 95/2010

Sh Om Parkash V/s M/s Perfect security Parwanoo

3/10/2012.

Present: Shri R.K Khidta, Advocate for petitioner.

Shri V.K Gupta, AR for respondent.

Today, Ld. Counsel for petitioner disclosed that the parties have entered into a compromise, as the result, the petitioner did not want to press this reference. For the said reason, the petitioner has not filed claim also. Statement of Ld. Counsel for petitioner recorded. In the light of said statement, the reference stands answered accordingly. Statement of the Ld. Counsel for the petitioner shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.

3/10/2012.

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

Sh Salinder Kumar V/s M.D. the Himachal energy Jabli , Solan

17.10.2012.

Present: Petitioners with Shri Niranjana Verma, Advocate.
Shri Rahul Mahajan, Advocate for respondent.

Today, both the petitioners present in the Court disclosed that they have settled the dispute with the respondent. In the light of settlement, both the petitioners received cheque of Rs. 60,000/- (Rs. Sixty Thousand only) each from the respondent and stated that they have no claim against the respondent and also prayed not to press the claim petition and decide the reference in the light of said settlement.

A joint statement of both the petitioners recorded. In view of the aforesaid settlement, they have received cheque of Rs. 60,000/- (Rs. Sixty Thousand only) each from the respondent as full & final settlement.

In the light of aforesaid settlement, the claim petition filed by the petitioners is hereby dismissed. Consequently, the reference is answered in affirmative to the effect that the dismissal from services of both the petitioners by the respondent w.e.f. 3.9.2008 is legal and justified and now apart from the aforesaid payment of Rs. 60,000/- (Rs. Sixty Thousand only) each, both the petitioners are not entitled to any service benefits from the respondent. The joint statement of both the petitioners recorded today shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.

17/10/2012.

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P)

Ref No. 29 of 2007.
Instituted on. 28.3.2007.
Decided on 17.10.2012.

Sher Singh S/o Shri Nehal Singh R/o Village Teepra, House No. T-4-B (Near Railway Water Pump), P.O Parwanoo, District Solan, H.P. *...Petitioner.*

Vs.

The Managing Director, M/s Sinic Electronics Pvt. Ltd., Parwanoo, District Solan, H.P.
...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.
For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Sher Singh S/o Shri Nihal Singh workman by the Management M/s Sinic Electronics Private Limited, Parwanoo, District Solan, H.P w.e.f. 5.10.2004 without serving him charge sheet and without holding any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed the claim stating that he was appointed as an Engineer by the respondent in September, 2003. The petitioner remained in the employment till 5.10.2004 when he was illegally removed from the service. Consequently, petitioner raised demand notice. The petitioner had usually come to attend his duties on 5.10.2004 but he was not allowed to enter the gate of the factory and was stopped to resume his duties. The termination of petitioner was against the provisions of Industrial Disputes Act, 1947 as no notice was served upon him. The petitioner had worked for more than 240 days in a calendar year prior to his termination on 5.10.2004. The petitioner also stated that the junior employees to him were retained in the employment and were also engaged after his termination, thereby, respondent violated the provisions of section 25-G & 25-H of Industrial Disputes Act, apart from the violation of section 25-F of Industrial Disputes Act, 1947. Consequently, petitioner prayed to set aside his termination and to reinstate him with full back wages, seniority and other consequential benefits.

3. The respondent contested the claim by filing a reply wherein preliminary objections as to maintainability and competence of the petitioner to file the present claim petition were raised. On merits, the respondent stated that petitioner was appointed as Production Engineer and he was discharging the Managerial and Supervisory duties, so, he was not a workman. As the result, he was not entitled to get any relief under the provisions of Industrial Disputes Act, 1947. The respondent further stated that vide letter dated 15.9.2004, the petitioner was transferred from Parwanoo to Chennai in terms of appointment letter but he did not join at Chennai. The petitioner willfully abandoned the job whereas he was never terminated. The transfer orders were received by the petitioner on 3.10.2004. A notice was sent to the petitioner asking him to join his duties at Chennai but in vain. Since, the petitioner was not terminated, therefore, respondent prayed for the dismissal of the claim petition.

4. Petitioner did not file any rejoinder. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of Shri Sher Singh petitioner by the Management of M/s Sinic Electronics Pvt. Ltd., Parwanoo, District Solan, H.P w.e.f. 5.10.2004 without serving his charge sheet and without holding any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged?OPP.
2. If issue no.1 is proved, to what relief the petitioner is entitled to? ...OPP.
3. Whether the claim is neither competent nor maintainable as alleged? ...OPR.
4. Whether the petitioner is not a workman as alleged? ...OPR.

5. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1 Become redundant as petitioner himself abandoned the job.

Issue No. 2 Not entitled to any relief.

Issue No. 3 Yes.

Issue No. 4 No.

Relief. Reference is pre-mature and is answered accordingly.

Reasons for finding

Issue No. 1 & 4.

8. Both these issues are interconnected and can be disposed of by a single finding.

9. The respondent has alleged that the petitioner is not a workman as he was discharging the duties of Manager and Supervisor.

10. After due consideration, I do not find any material on record to establish that the petitioner was doing the duties of Manager or Supervisor. On behalf of respondent RW-1 Jai Singh, Administrative Officer was examined who has given a general statement that there were 7/8 workers under the petitioner but no record was produced in evidence to show the names of the workers who were working under the petitioner. There is nothing in evidence to show that the petitioner was discharging the supervisory functions.

11. The petitioner has produced in evidence the copy of his appointment letter Ex. RC revealing the terms and conditions of his appointment. Condition no.8 is relevant which is revealing that the petitioner would observe the usual working hours and he would not be eligible for any leave till the completion of 240 days (actual working days). This condition is sufficient to suggest that in fact the appointment of petitioner was that of a workman and not that of a manager or supervisor because there was stipulation of actual working days to the extent of 240 days. Moreover, as discussed hereinabove there is no evidence on record to show that the petitioner was discharging the function of a supervisor or manager. Consequently, it is hereby held that the petitioner was engaged as a workman by the respondent.

12. Now, comes the question of alleged termination of services of the petitioner by the respondent. Taking into account pleadings as well as evidence of the parties, I am of the considered opinion that the respondent has never terminated the services of the petitioner. The material on record goes to suggest that the petitioner himself has abandoned the job and after 5.10.2004 he has not been coming to his duties.

13. The testimony of petitioner Sher Singh is revealing that he worked till 4.10.2004 and thereafter he was not allowed to enter the main gate of the factory as the gate was closed for him. The respondent has denied this allegation of the petitioner as is evident from the reply filed by the respondent. Apart from the bald statement of petitioner, there is no other evidence on record on behalf of petitioner in support of his allegation that the respondent company did not allow him to

enter into the factory premises and the gate was closed for him. The petitioner could have examined his fellow workman in support of his contention.

14. The evidence on record has also established that the petitioner was transferred to Chennai vide copy of transfer order Ex. RD dated 15.9.2004. In view of testimony of petitioner he did not get any transfer orders. First of all, we have to see whether petitioner could be transferred to Chennai. Here, the appointment letter of petitioner Ex. RC is relevant. The condition no. 2 of appointment letter is revealing that whenever there is necessity, the petitioner will be sent out-side the city to carry out his duties and he is liable to be transferred to any place in India. That means the transfer of petitioner to Chennai is strictly in accordance with the terms and conditions of his appointment letter. So, the transfer of petitioner cannot be held as illegal.

15. The evidence on record has established that the petitioner has not joined at Chennai. The petitioner has alleged that he was removed from the service and only in order to justify his removal, the transfer orders were manipulated subsequently. In support of this contention, I do not find any convincing material on record. Since, as per the terms and conditions of the appointment letter of petitioner, he could be transferred to anywhere in India, so, his transfer to Chennai Branch of respondent company was legal and valid. Being the employee of the respondent, petitioner was duty bound to obey the transfer orders. It is undisputed fact that petitioner has not joined at Chennai and after 4.10.2004, he has not been coming to his duties.

16. Here, the cross-examination of petitioner is relevant wherein he has categorically stated that as on today he is not ready and willing to comply with the transfer orders. This admission of petitioner is fatal. I am of the opinion that the petitioner has raised demand notice only to frustrate his transfer orders to Chennai and under the garb of present reference, petitioner has intended to frustrate his transfer orders and intended to remain at Parwanoo.

17. The witness of respondent RW-1 Jai Singh has stated that petitioner was only transferred to Chennai but he did not obey the transfer orders. He has nowhere deposed that the respondent has terminated the services of petitioner.

18. So, from the evidence on record, it is clear that petitioner Sher Singh is not interested in going to Chennai on his transfer. That is why after his transfer orders he remained absent w.e.f. 5.10.2004. At the same time, it is also a matter of record that the services of petitioner has not been actually terminated by the respondent, as till date, no termination orders have been passed by the respondent. The respondent has alleged that the petitioner is not joining at Chennai and he is absent from his duties since 5.10.2004. It is also a matter of fact that the respondent has not initiated any disciplinary action against the petitioner for his absence from duties since 5.10.2004. So, legally speaking the services of petitioner have not been terminated yet by the respondent. It is a different issue that the petitioner is not joining his duties and for the same respondent being the employer is entitled to initiate disciplinary action against the petitioner in accordance with law.

19. Hence, taking into account all the evidence and facts and circumstances of the case, it is clear that the petitioner himself has abandoned the job and he wants to frustrate his transfer orders to Chennai. I do not find any evidence on record to establish that the services of petitioner have been terminated by the respondent w.e.f. 5.10.2004. Since, there is no termination order of the petitioner, therefore, the issue no.1 has become redundant and consequently, the petitioner is not entitled to any relief as I am of the opinion that in the absence of termination orders of petitioner, the demand notice raised by the petitioner is pre-mature and accordingly the reference received in the Court is of no legal consequences and it cannot be answered being premature.

20. Hence, for the aforesaid reasons, issue no.1 is decided having become redundant whereas issue no.4 is decided against the respondent.

Issue No. 2

21. For the reasons to be recorded hereinabove while discussing issues no.1 & 4, since issue no.1 has become redundant, the petitioner is not entitled to any relief as prayed for by him. Hence, this issue is decided against the petitioner.

Issue No. 3

22. For the reasons to be recorded hereinabove while deciding issue no.1, the claim filed by the petitioner is neither competent nor maintainable. Hence, this issue is decided in favour of respondent.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is hereby dismissed as there is no termination order of the petitioner. Hence, the claim petition is pre-mature and to my mind the petition is not maintainable. Consequently, the reference has become redundant being premature and is hereby answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 17th day of October, 2012 in the presence of parties counsel.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref. 124/2010

Sh Tarsem Lal V/s Regalia Laminates Baddi

6/10/2012.
Present: None.

Case called twice but none is present on behalf of the parties. It is 10.50AM. Be called again.

Presiding Judge,
Labour Court, Shimla.

Case called again after lunch.

Present: None.

It is 2.45 PM but none is present on behalf of the parties.

The following reference was received from the appropriate government for adjudication:

“Whether the verbal termination of the services of Shri Tarsem Lal S/o Shri Bhangi Ram by the Managing Director, M/s Regalia Laminates, Plot no. 31 EPIP, Thana Baddi, District Solan, H.P w.e.f. 29.10.2009 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to”

The petitioner had availed opportunities to file petition in support of his claim. Having availed so many opportunities, no claim petition was filed by the petitioner Tarsem Lal whose services have been allegedly terminated and qua the same, the reference in question is received in this Court.

Since, neither any claim petition nor any evidence is on record, hence, it cannot be held that the termination of the services of petitioner Shri Tarsem Lal by the Managing Director, M/s Regalia Laminates, Plot no. 31 EPIP, Thana Baddi, District Solan, H.P w.e.f. 29.10.2009 is illegal or unjustified. Hence, the reference is answered in affirmative and consequently, the petitioner is not entitled to any service benefit, in any manner, whatsoever. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.
6/10/2012.

*Presiding Judge,
Labour Court, Shimla.*

30.10.2012

Present: Shri Vineet Guleria, Advocate for petitioner.

Shri Jagdish Kanwar, Dy. DA for respondent.

Today the case was fixed for PWs. At this stage, Ld. Counsel for petitioner prayed to withdraw the claim petition. Statement of Ld. Counsel recorded.

The following reference was received from appropriate government for adjudication:

“Whether the demand of Shri Rajesh Kumar S/o Shri Sher Singh thought Shri gopal Jhila, State Finance Secretary, Bhartiya Mazdoor Sangh HP for regularizing his seniority w.e.f. October, 1999 when he was initially engaged by the employer as alleged by the workman is proper and justified? If yes, what relief the above workman is entitled to?”

The petitioner filed claim petition alleging that he was engaged by the respondent in October, 1999 and he worked continuously and also completed 240 days in each calendar year. He completed eight years of service in 2007 and in October, 2009 he completed ten years of service. Therefore, petitioner prayed that his services be regularized and for the purpose of regularization, his seniority be granted from October, 1999.

The claim of the petitioner was contested by the respondent by filing a reply wherein respondent denied that petitioner continuously worked since October, 1999. It was also denied that in each calendar year, the petitioner completed 240 days. It was stated that in the year 1999, the petitioner only worked for 18 days, thereafter left the job and again resumed duties on 9.2.2004. He worked for 203 days in 2004 and 154 days in the year 2010 upto 3.6.2010. Hence, the petitioner was not entitled for regularization as well as seniority as claimed by him. Accordingly, respondent prayed for the dismissal of the claim.

The petitioner filed rejoinder wherein he reasserted all the averments already made in claim petition.

On the pleadings of the parties, the following issues were framed.

1. Whether the demand of petitioner for regularizing his seniority w.e.f. October, 1999 is legal and justified? ...OPP.
2. If issue No.1 is proved, to what relief the petitioner is entitled to? ...OPP.
3. Whether this petition is not maintainable? ...OPR.
4. Relief.

The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Today, the case was fixed for the evidence of petitioner. At this stage, instead of leading evidence, petitioner intended to withdraw this claim petition and Ld. Counsel for petitioner made a statement not to press the claim petition. Thus, no evidence was led by the petitioner in support of aforesaid issues, hence, in the absence of any evidence on behalf of petitioner both the issues no.1 & 2 are decided against the petitioner.

From the careful perusal of the petition there is nothing to suggest that the petition is not maintainable, hence, issue no.3 is decided against the respondent.

For the foresaid reasons, the petitioner is not entitled to any relief as prayed for by him. Hence, the claim petition is hereby dismissed and issue no.4 is decided accordingly.

Since, the claim petition filed by the petitioner has been dismissed, hence, the reference is answered in negative as it cannot be held that the demand of petition for regularizing his services including seniority w.e.f. October, 1999 is justified and the petitioner is not entitled to any relief whatsoever. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.
30.10.2012.

*Presiding Judge,
Labour Court, Shimla.*